

## SCHEDULES

### SCHEDULE 1

Section 17

#### CERTIFICATION OFFICER: INVESTIGATORY POWERS: SCHEDULE TO BE INSERTED INTO THE 1992 ACT

#### “SCHEDULE A3

Section 256C

#### CERTIFICATION OFFICER: INVESTIGATORY POWERS

### Introduction

- 1 (1) The following are “relevant obligations” for the purposes of this Schedule—
  - (a) any of the requirements of section 24(1) (duties regarding the register of members);
  - (b) the requirement of section 45B (duty to secure positions not held by certain offenders);
  - (c) any of the requirements of Chapter 4 of Part 1 (elections for certain positions);
  - (d) the restriction in section 71 on the application of a trade union’s funds in the furtherance of political objects;
  - (e) any of the requirements of Chapter 6 of Part 1 about compliance with rules as to ballots on political resolutions;
  - (f) any of the requirements of a trade union’s rules made in pursuance of section 82 (rules as to political fund);
  - (g) any of the requirements of sections 99 to 100E (ballots on amalgamations or transfers);
  - (h) any requirement of a conditional penalty order made under Schedule A4.
- (2) In relation to the relevant obligations listed in sub-paragraph (1)(d) to (g) as they apply to unincorporated employers’ associations by virtue of section 132 or 133, this Schedule applies to an unincorporated employers’ association as in relation to a trade union.
- (3) In its application to an unincorporated employers’ association, this Schedule has effect—
  - (a) with any necessary modifications, and
  - (b) with such modifications as may be prescribed.

### Power of Certification Officer to require production of documents etc

- 2 (1) If the Certification Officer thinks there is good reason to do so, the Officer—
  - (a) may give directions to a trade union, or a branch or section of a trade union, requiring it to produce such relevant documents as are specified in the directions;

(b) may authorise a member of the Officer’s staff or any other person (“an authorised person”), on producing (if so required) evidence of that authority, to require a trade union, or a branch or section of a trade union, to produce immediately to the authorised person such relevant documents as that person specifies.

(2) “Relevant documents”, in relation to a trade union or a branch or section of a trade union, means documents that in the opinion of the Certification Officer or authorised person may be relevant to whether the trade union has failed to comply with a relevant obligation.

Such documents may in particular include, in the case of a requirement of section 24(1), the register of the names and addresses of the union’s members.

(3) Directions under sub-paragraph (1)(a) must specify the time and place at which the documents are to be produced.

(4) Where the Certification Officer, or an authorised person, has power to require the production of documents by virtue of sub-paragraph (1), the Officer or authorised person has the like power to require production of those documents from any person who appears to the Officer or authorised person to be in possession of them.

(5) The power under this paragraph to require the production of documents includes the power—

(a) if the documents are produced—

(i) to take copies of them or extracts from them;

(ii) to require the person by whom they are produced to provide an explanation of any of them;

(iii) to require any person who is or has been an official or agent of the trade union to provide an explanation of any of them;

(b) if the documents are not produced, to require the person who was required to produce them to state, to the best of the person’s knowledge and belief, where they are.

(6) For the purposes of sub-paragraph (5)(a)(iii), “agent” includes an assurer appointed by the trade union under section 24ZB.

(7) For supplementary provision, see paragraph 6.

### **Investigation by inspectors**

3 (1) If the Certification Officer has reasonable grounds to suspect that a trade union has failed to comply with a relevant obligation, the Officer may appoint one or more members of the Officer’s staff or other persons as an inspector or inspectors—

(a) to investigate whether the union has failed to comply with such an obligation, and

(b) to report to the Officer in such manner as the Officer may direct.

(2) Where any person appears to the inspector or inspectors to be in possession of information relating to a matter considered by the inspector or inspectors to be relevant to the investigation, the inspector or inspectors may require the person—

(a) to produce to the inspector or inspectors any relevant documents relating to that matter,

(b) to attend before the inspector or inspectors, and

- (c) otherwise to give the inspector or inspectors all assistance in connection with the investigation which the person is reasonably able to give.
- (3) “Relevant documents” means documents that in the opinion of the inspector or inspectors may be relevant to whether the trade union has failed to comply with a relevant obligation.
  - (4) Where a person who is not a member of the Certification Officer’s staff is appointed as an inspector under this paragraph, there is incorporated in the appointment the duty of confidentiality as respects the register of the names and addresses of the trade union’s members.
  - (5) The duty of confidentiality as respects that register is a duty which the inspector owes to the Certification Officer—
    - (a) not to disclose any name or address in the register of the names and addresses of the union’s members except in permitted circumstances, and
    - (b) to take all reasonable steps to secure that there is no disclosure of any such name or address by another person except in permitted circumstances.
  - (6) The circumstances in which disclosure of a member’s name or address is permitted are—
    - (a) where the member consents,
    - (b) where it is required or requested by the Certification Officer for the purposes of the discharge of any of the Officer’s functions,
    - (c) where it is required for the purposes of the discharge of any of the functions of the inspector or any other inspector appointed by the Officer,
    - (d) where it is required for the purposes of the discharge of any of the functions of an assurer appointed under section 24ZB, or
    - (e) where it is required for the purposes of the investigation of crime or criminal proceedings.
  - (7) For supplementary provision, see paragraph 6.

### **Inspectors’ reports etc**

- 4 (1) An inspector or inspectors appointed under paragraph 3—
  - (a) may make interim reports to the Certification Officer,
  - (b) must make such reports if so directed by the Officer, and
  - (c) on the conclusion of the investigation, must make a final report to the Officer.
- (2) A report under sub-paragraph (1) must be in writing.
- (3) An inspector or inspectors—
  - (a) may at any time inform the Certification Officer of any matters coming to their knowledge as a result of the investigation, and
  - (b) must do so if the Officer so directs.
- (4) The Certification Officer may direct an inspector or inspectors—
  - (a) to take no further steps in the investigation, or
  - (b) to take only such further steps as are specified in the direction.

- (5) Where such a direction is made, the inspector or inspectors are not required under sub-paragraph (1)(c) to make a final report to the Certification Officer unless the Officer so directs.

### **Enforcement of paragraphs 2 and 3 by Certification Officer**

- 5 (1) Where the Certification Officer is satisfied that a trade union or any other person has failed to comply with any requirement imposed under paragraph 2 or 3, the Officer may make an order requiring the trade union or person to comply with the requirement.
- (2) Before making such an order, the Certification Officer must give the trade union or person an opportunity to be heard.
- (3) In the case of a failure to comply with a requirement imposed under paragraph 2 or 3 to produce a document, the Certification Officer may make an order only if the Officer is satisfied that—
- (a) the document is in the possession of the union or person, and
  - (b) it is reasonably practicable for the union or person to comply with the requirement.
- (4) In the case of a failure to comply with any other requirement imposed under paragraph 2 or 3, the Certification Officer may make an order only if the Officer is satisfied that it is reasonably practicable for the union or person to comply with the requirement.
- (5) The order must specify—
- (a) the requirement with which the trade union or person has failed to comply, and
  - (b) the date by which the trade union or person must comply.
- (6) An order made by the Certification Officer under this paragraph may be enforced by the Officer in the same way as an order of the High Court or the Court of Session.

### **Supplementary**

- 6 (1) Nothing in this Schedule requires or authorises anyone to require—
- (a) the disclosure by a person of information which the person would in an action in the High Court or the Court of Session be entitled to refuse to disclose on grounds of legal professional privilege, or
  - (b) the production by a person of a document which the person would in such an action be entitled to refuse to produce on such grounds.
- (2) But a lawyer may be required under paragraph 2 or 3 to disclose the name and address of the lawyer's client if that information may be relevant to whether a trade union has failed to comply with a requirement of section 24(1).
- (3) A person is not excused from providing an explanation or making a statement in compliance with a requirement imposed under paragraph 2(5) or 3(2) on the ground that to do so would tend to expose the person to proceedings for an offence.
- (4) But an explanation so provided or a statement so made may be used in evidence against the person by whom it is provided or made on a prosecution for an offence only where, in giving evidence, the person makes a statement inconsistent with it.

(5) In this Schedule—

- (a) references to documents include information recorded in any form;
- (b) in relation to information recorded otherwise than in legible form, references to its production are to the production of a copy of the information in legible form.”